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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

IN RE THE PERSONAL RESTRAINT  
PETITION OF:

RAYMOND GARLAND,  
  
Petitioner.

NO. 45165-4-II

STATE'S SUPPLEMENTAL  
RESPONSE TO PERSONAL  
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Whether the Court should consider issues arising from the record that could and should have been raised in the direct appeal?
2. Whether trial defense counsel conveyed a plea offer made by the State?
3. Where the petitioner rejected the plea offer and consistently refused to plead guilty to any murder charge, whether the petitioner can demonstrate that he likely would have accepted the State's plea offer of a murder charge?
4. Whether trial defense counsel was deficient in failing to foresee that a change in trial strategy in the third trial could be held against the petitioner?
5. If trial defense counsel violated rules of ethics, was the behavior deficient performance *per se* and prejudicial to the petitioner?

1           6.     If trial defense counsel lacked candor to the trial court, was it strategic?

2  
3     B.     ARGUMENT:

4           Mr. Garland has filed his original PRP, and the State has previously filed a lengthy  
5 response brief addressing most of the issues the petitioner raised. Mr. Garland's current  
6 attorneys have filed a detailed supplemental PRP which replies to the State's arguments  
7 and raises additional ones for Mr. Garland. Because current counsel for Mr. Garland and  
8 previous counsel for the State have more than adequately discussed most of the issues  
9 presented, the present Supplemental Brief will not repeat them, but address facts or issues  
10 not discussed in the State's previous brief.

11  
12           1.     THE COURT SHOULD NOT CONSIDER ISSUES RAISED IN  
13                 THIS COLLATERAL ATTACK THAT COULD HAVE BEEN  
               RAISED IN DIRECT APPEAL.

14           The Supreme Court has often stated that a PRP is not a substitute for appeal. *See In*  
15 *re Personal Restraint of Stockwell*, 179 Wn.2d 588, 597, 316 P. 3d 1007 (2014); *In re*  
16 *Personal Restraint of Hagler*, 97 Wn.2d 818 823-24, 650 P.2d 1103 (1982). Collateral  
17 attack by on a criminal conviction and sentence should not simply be a reiteration of issues  
18 finally resolved at trial and direct review, but rather should raise new points of fact and law  
19 that were not or could not have been raised in the direct appeal. *In re Personal Restraint*  
20 *of Davis*, 152 Wn.2d 647, 670, 101 P.3d 1 (2004).

21           Here, the petitioner had a direct appeal where he was represented by counsel and  
22 had the opportunity to raise additional arguments and issues of his own in a Statement of  
23 Additional Grounds (SAG). *See State v. Garland*, 169 Wn. App. 869, 282 P.3d 1137  
24 (2012). There the petitioner had the opportunity to assign error to decisions by the trial  
25

1 court, such as the admission of evidence, his right to be present during an *in camera*  
2 hearing, whether the verdicts were inconsistent, and even cumulative error; all of which he  
3 now raises in his PRP.

4 Instead, the appeal focused on the actions and trial strategy of his attorney. The  
5 issue was whether the change in defense theory could be used against the defendant. *Id.*, at  
6 875. Although the petitioner certainly could have raised the issue of ineffective assistance  
7 of counsel from the record, as he does now, the Court noted that he chose not to. *Id.*, at  
8 893, n. 11.

9 Defendants should be discouraged from using a PRP as a second or back-up appeal.  
10 Litigants should raise all viable issues they wish the appellate court to consider in a direct  
11 appeal. A PRP should be used for issues that develop or come to light after the appeal, or  
12 concern matters outside the record. Here, the petitioner has new counsel, who has done a  
13 very thorough job discussing issues they likely would have raised in a direct appeal. But,  
14 the petitioner was represented by counsel in the appeal, and had his opportunity to raise  
15 many of these issues already. The Court should not condone or consider this type of  
16 piecemeal argument.

18  
19 2. SUPPLEMENTAL INFORMATION DEMONSTRATES THAT  
20 THE PETITIONER REJECTED THE STATE'S PLEA OFFER  
21 AND WAS AWARE, AND APPROVED OF, HIS ATTORNEY'S  
22 CHANGE IN TRIAL STRATEGY.

23 The petitioner's supplemental brief correctly points out *Lafler v. Cooper*, — U.S.  
24 —, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012), and *Missouri v. Frye*, — U.S. —,  
25 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012), recent United States Supreme Court cases  
which confirm that defendants are entitled to effective representation in the pre-trial and  
plea-bargaining process. *See*, Suppl. PRP, at 19. This Court recently considered similar

1 issues presented in *State v. Edwards*, 171 Wn. App. 379, 393-394, 294 P. 3d 708 (2012).  
2 As this Court said in *Edwards*, the issue is “whether defense counsel communicated the  
3 offers to the defendant and whether the defendant has demonstrated a reasonable  
4 probability that the defendant would have accepted the offer.” *Id.*, at 394, citing *Cooper*,  
5 132 S. Ct. at 1384 and *Frye*, 132 S. Ct. at 1409.

6 The petitioner was represented at trial by Ms. Corey; an experienced, hard-working,  
7 and creative attorney. The record and Ms. Corey’s Declaration (attached as Appendix A)  
8 reflect the efforts she took to represent the petitioner. Ms. Corey’s trial strategies were  
9 based upon years of experience in criminal law. From years of experience, she knew that it  
10 was important to consult with her client regarding the case and trial strategy.

11 Ms. Corey makes it clear that she did convey the State’s offer to the petitioner. *See*  
12 Corey Declaration, pp. 4, 6, 7. He rejected the offer. *Id.*, at 6, 7. The petitioner made clear  
13 that he would not plead guilty to a murder charge. *Id.*, at 4, 7. He also rejected the idea of  
14 pleading guilty to any “two strike” offers. *Id.*, at 6. His goal was an outright acquittal or, at  
15 most, a manslaughter conviction. *Id.*, at 4.

17 Ms. Corey conveyed the plea offer. The petitioner rejected it. His consistent  
18 opposition to a murder conviction or even “two strikes” demonstrates that there was no  
19 “reasonable probability that the defendant would have accepted the offer.”

20 The petitioner is not the first defendant who insisted on going to trial, hoping for an  
21 acquittal, or conviction on a lesser charge, only to be disappointed by the verdict. *See e.g.*,  
22 *State v. Hoffman*, 116 Wn.2d 51, 112, 804 P.2d 577 (1991); *see also State v. Grier*, 171  
23 Wn.2d 17, 246 P.3d 1260 (2011). The petitioner is also not the first to blame his lawyer  
24  
25

1 when the strategy the defendant insisted upon or agreed to is unsuccessful. *See Grier,*  
2 *supra.*

3 As the United States Supreme Court observed: “[I]t is all too easy for a court,  
4 examining counsel's defense after it has proved unsuccessful, to conclude that a particular  
5 act or omission of counsel was unreasonable.” *Strickland v. Washington*, 466 U.S. 668,  
6 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The same may be said of the hindsight of a  
7 defendant who has been sentenced to a lengthy prison term. While it is natural for a  
8 defendant to regret declining a plea offer and proceeding to trial, this Court should be  
9 skeptical of self-serving hindsight.

10  
11 3. ASSUMING, *ARGUENDO*, COUNSEL’S DEFICIENCY FOR  
12 LACK OF CANDOR TO THE COURT, THE PETITIONER FAILS  
TO DEMONSTRATE RESULTING PREJUDICE.

13 a. Candor to the trial court.

14 If the facts are as the petitioner represents them; the Supplemental PRP properly  
15 criticizes Ms. Corey’s lack of candor to the court. Suppl. PRP at 26-33. But, this behavior  
16 may or may not be deficiency of counsel. A trial can be a fluid thing. Trial counsel must be  
17 prepared to deal with expected and unexpected developments. A change in course or  
18 strategy at trial may be dictated by the evidence received, a change in a witness’ or the  
19 defendant’s account of the events, or the defendant deciding to testify.

20  
21 Even if Ms. Corey purposely deceived the prosecutor and lacked candor to the  
22 court, such behavior is not necessarily deficiency of counsel in the constitutional sense. It  
23 may have been strategic. If it was misplaced or unsuccessful strategy, it would not  
24 necessarily be deficient performance. *See gen. State v. McFarland*, 127 Wn.2d 322, 336,  
25 899 P.2d 1251 (1995). If counsel hoped to gain an advantage for her client by deceiving

1 opposing counsel or the court, counsel's conduct may be unethical and subject to  
2 discipline, but that is not a factor in determining deficiency of counsel. A lawyer's  
3 violation of ethical norms does not make the lawyer *per se* ineffective. **Burt v. Titlow**, -  
4 U.S.-, 134 S. Ct. 10, 18, 187 L. Ed. 2d 348 (2013), citing **Mickens v. Taylor**, 535 U.S. 162,  
5 171, 122 S. Ct. 1237, 152 L. Ed. 2d 291 (2002). Our Supreme Court has also pointed out  
6 that the issues of ineffective assistance of counsel are "generally not amenable to *per se*  
7 rules." **Grier**, 171 Wn.2d at 34, quoting **State v. Cienfuegos**, 144 Wn.2d 222, 229, 25 P.3d  
8 1011 (2001).

9 A defendant establishes prejudice by showing there is a reasonable probability that  
10 the result of the proceeding would have been different but for counsel's unprofessional  
11 errors. **McFarland**, 127 Wn.2d at 335. When a defendant challenges a conviction, "the  
12 question is whether there is a reasonable probability that, absent the errors, the fact finder  
13 would have had a reasonable doubt respecting guilt." **Strickland**, 466 U.S. at 695.

14 Even assuming that Ms. Corey was unethical in her colloquy with the court, and  
15 that behavior was deficient performance, the petitioner fails to demonstrate that it affected  
16 the jury's verdict. The petitioner fails to demonstrate that the jury even had any knowledge  
17 of the exchange between the court and Ms. Corey. Without such knowledge, there would  
18 be no impact on the verdict. The petitioner fails to demonstrate the behavior affected the  
19 outcome of the case in any other way, as well.

20  
21  
22 b. Change in trial strategy.

23 The petitioner criticizes Ms. Corey for not knowing that the petitioner could be  
24 impeached with her change in opening statement or strategy. Suppl. PRP at 33-38. But this  
25 state of the law was not always so clear.

1 As a general rule, a witness may be impeached only with his or her own prior  
2 statements. *See* Karl B. Tegland, 5A Washington Practice, Evidence Law and Practice §  
3 613.3 (4th ed.). Inconsistent statements by agents and others associated with the witness  
4 are normally inadmissible for impeachment. *Id.*, at § 613.8. *See also State v. Williams*, 79  
5 Wn. App. 21, 902 P.2d 1258 (1995). This Court itself stated that the issue was one of first  
6 impression in the petitioner's appeal. *Garland*, 169 Wn. App. at 875. An attorney's failure  
7 to anticipate a change in the law is not ineffective assistance of counsel. *See In re Personal*  
8 *Restraint of Benn*, 134 Wn.2d 868, 939, 952 P.2d 116 (1998).

9 It should be noted that, regarding the change in strategy for the third trial, Ms.  
10 Corey states that she discussed this with the petitioner. Corey Declaration at 8. The  
11 petitioner agreed to the change in strategy. *Id.* The petitioner was aware of the risks of  
12 changing the strategy. *Id.*, at 8, 9.

13 C. CONCLUSION:

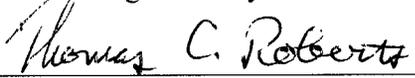
14 Ms. Corey, an experienced criminal trial attorney, spent many hours preparing this  
15 case and conducting the trials. She diligently and zealously represented the petitioner's  
16 interests in a very difficult case. Although some of her decisions and actions may be open  
17 to criticism, the same may be said of many trial lawyers; criminal and civil. Whether or not  
18 some of her actions were unethical are separate issues from whether these actions were  
19

1 deficient performance and prejudicial to the petitioner. The petitioner demonstrates neither  
2 prong of the *Strickland* test.

3 The State respectfully requests that the petition be denied.

4 DATED: February 10, 2015

5 MARK LINDQUIST  
6 Pierce County  
7 Prosecuting Attorney

8   
9 THOMAS C. ROBERTS  
10 Deputy Prosecuting Attorney  
11 WSB # 17442

12 Certificate of Service:

13 The undersigned certifies that on this day she delivered by *efile* U.S. mail or  
14 ABC-LMI delivery to the petitioner true and correct copies of the document to  
15 which this certificate is attached. This statement is certified to be true and  
16 correct under penalty of perjury of the laws of the State of Washington. Signed  
17 at Tacoma, Washington, on the date below.

18 2/10/15 Jehanson  
19 Date Signature

## **APPENDIX “A”**

*Declaration of Barbara Corey*

FEB 04 2015

PIERCE COUNTY  
PROSECUTING ATTORNEY

DECLARATION OF BARBARA COREY

1. I am over the age of 18 and competent to make this declaration.
2. I have been a licensed attorney in Washington State since November 17, 1981.  
  
I am admitted to practice in the State of Washington, United States District Court for the Western District of Washington, the Ninth Circuit Court of Appeals, the Supreme Court of the United States of America, as well as the State of Minnesota.
3. I am a member in good standing of the Washington State Bar Association.
4. I have practiced exclusively criminal law since my admission to practice.
5. Because I was employed as a Rule 9 intern by the King County Prosecuting Attorney's Office during law school and handled many district court jury trials and RALJ appeals during that time, I was assigned to the felony division upon admission to the bar.
6. In the felony division, I served on the appellate unit under supervisor J. Robin Hunt and also on trial teams, handling burglaries, sex crimes cases, robberies and assaults, and homicides. In King County at that time, deputy prosecutors generally handled appeals from their own cases as well. I was employed a deputy prosecutor for Norm Maleng at the King County Prosecuting Attorney's Office from my admission to bar until May 1, 1984.
7. At that time, I moved to Tacoma and began working as a deputy prosecutor with the Pierce County Prosecuting Attorney's Office. I was hired as the supervisor for the appellate unit but almost immediately thereafter was made supervisor on the special assault unit, a position I filled for more than nine

years. I then returned to supervise the appellate unit, then became the chief felony unit. I left that office in late January 2004 after a dispute with the prosecutor Gerald Horne. A jury vindicated my position in that dispute, found that Mr. Horne had committed numerous grievous tortious acts against me, and entered an appropriate sanction.

8. During my tenure with the Pierce County Prosecuting Attorney's Office, I charged and tried many homicide cases. I cannot put a number on those cases as I never kept track of them. Suffice it to say that I was and am a very hard worker and devote myself fully to cases.
9. In February 2004 I opened my practice as defense counsel. My practice is restricted to serious felonies and private appeals. Most of my cases are private cases although I do accept panel cases from the Department of Assigned Counsel. I have been retained as defense counsel on several homicide cases.
10. In September 2005 Margaret Cook, Raymond Garland's mother, contacted me to express her unhappiness with Mr. Garland's then attorney Rodney DeGeorge.
11. She retained me to represent Ray and I appeared as his counsel on September 23, 2005. Before I was retained, I met more than once with Ray to assure that we would be able to work together and to ensure that we had confidence and trust in one another. Bob Crow, a very capable and experienced investigator, worked on the case with me. We agreed that we could and would together to defend Ray in this case.

12. Ray expressly gave permission for us to discuss all aspects of the case with Margaret Cook. Margaret had a sound knowledge of the facts of the case and provided information to us throughout. Both Bob and I, jointly and separately, had hundreds of conversations with Margaret over the years regarding the case. Many of these were over the phone. Margaret and I often spoke via cell phone on the way to and from work as well as at my office and in court.
13. Although I can say these cases were “flat fee” cases, I nonetheless kept track of my hours. Over the three cases, I spent 1947.3 hours or 243.4 days on these cases. We obtained all police reports on important state’s witnesses. We recorded and transcribed all witness interviews. I did extensive background work on all of the witnesses, prepared all aspects of the trial, spent time discussing all aspects of the case with Ray, prepared numerous motions, went into the field with Bob to view locations relevant to the incident, interview witnesses, seek certain witnesses for the defense, and of course meet of with the prosecutors about the case. Before I filed my motions in the case, I always reviewed them with Ray to the extent that he was made aware of the nature of each motion and the relief I requested.
14. Bob and I regularly met with the client. During client meetings in the jail, I always am accompanied by my investigator. It is my practice that my investigator takes detailed notes of the meeting for his file. I do this because I do not want there to be any issue about what was said during the meetings. Mr. Crow did that during every meeting.

15. I spoke with Ray over the phone often. Whenever I discussed any potential resolution of the case, I carefully went over all aspects of the offer.
16. Both Margaret and Ray made it crystal clear to me early on that Ray would never plead guilty to any *murder* charge. Their goal, of course, was an outright acquittal or, at most, a manslaughter conviction. Ray made it clear to me time and again that he would never plead guilty to a murder charge. I always knew this. This was Ray's position during the entire time that I represented him.
17. As is evident from the emails that have been submitted from 2008, it is clear that I tried many times to get an offer for manslaughter.
18. As is also clear from the trial record, Ray wanted a different attorney after the verdict came in after the first trial actually went all the way to the jury. He said so the judge in so uncertain terms.
19. At the same, I was concerned about the financial strain the Garland case was taking on my practice. *I emphasize that this in no way affected my representation of Ray.* I had entered in the retainer contract with the client *with his mother as payee.* Ray had no involvement in the payment arrangements and was not a party to that portion of the retainer. I more than fulfilled the contract. However, there was further litigation to be done in Ray's case. Ray wanted Bob to continue on the case and to be present for trial – Bob had not been paid for some time and it was not looking as though he was going to get paid. I needed an investigator. I also needed to be paid for future work.

20. I took a loss on the case and of course never took any legal action to collect monies owed although Margaret did state that she would pay for some of the time and other expenses incurred. I periodically saw Margaret over the years and she always said she would pay when she “got a job.”
21. We did have a brief in camera hearing about my payment in the case. We did not discuss the substance of the case or issues related thereto. I note that this hearing occurred after Ray had stated in open court and on the record that he wanted a new attorney. The judge was considering this. The judge stated that he would appoint DAC to compensate me for further work on the case. I believe that he did. I did continue to do additional work on the case. I never did bill DAC.
22. Bob Crow passed away unexpectedly due a sudden heart attack on February 24, 2010. He shared his office with his partner and son Gerald Crow, Jr. Subsequently their office was flooded by a broken sewage line and files were destroyed.
23. The prosecutor refused to plea bargain at all in the first trial. I believed then, as I do now, that the case was always overcharged. Further, in the first trial, the State was not able to produce the other “victim” Karltin Marcy, until after the trial started. For a while it appeared likely that the State would lose that count due to the lack of a witness. The first trial resulted in a mistrial because we ran out of jurors. All of the alternates had been excused and we were down to the twelve jurors in the box. The prosecutor’s chief victim witness advocate gave one of the remaining twelve jurors a ride home from jury service. That

juror then had to be excused. Mr. Garland refused to relinquish his constitutional right to a jury of twelve.

24. A second jury trial commenced. This trial, too, resulted in a mistrial. The lead detective was found to have “annotated” her trial notebook with the placement of “post-it” notes concerning factual issues raised in the first trial. More problematic, however, was a email obtained by the defense in public records request. In that email, the trial court had communicated to jail security its belief that Mr. Garland’s family was dangerous and that the courthouse needed to take extra security precautions in the courtroom because of them. The trial court stated it had chosen email to communicate this message because email would not be discovered by the parties. Mr. Garland moved for a dismissal and the court granted this dismissal.

25. The only offer that the prosecutor made to us in this case was an offer that Ray adamantly rejected. I also discussed this offer, with Ray’s permission, with Margaret. She also did not want her son to accept the offer and communicated that to him.

26. Ray did not want to plead to any offer that required “two strike” convictions. I had explained that for purposes of the “three strikes” law, *strike offenses that are sentenced on the same day count as one strike*. This reflects the intent of the drafters of the three strikes law to allow defendants a period between strike offenses within which to rehabilitate themselves or strike-free lives.

27. Further Ray, and Margaret, too, wanted assurances that Ray would be able to serve at least part of his sentence in Scotland. The State was never willing to bargain on this point.
28. That offer was communicated to me via email on Tuesday, November 3, 2009. That offer email as are emails related thereto are attached hereto as appendix A. The total time under the plea offer was 365 months. Ray rejected the offer. As a result of electing to go to trial, I understand that after the trial post-remand he was sentenced to 380 months, an additional 18 months.
29. I emphasize that I carefully and thoroughly discussed every plea offer with Ray. Bob was present for these discussions. I always acted in Ray's best interest, advocated vigorously for him, and wanted to secure the most favorable outcome for him.
30. Ray always told me that he would never plead guilty to a murder charge. He never budged from that position.
31. Margaret was in Scotland during the time that we were considering this offer. This is apparent from the emails in Appendix A. Ray did not want the offer but he wanted his mother to know about it. It was ultimately Ray's decision to accept or reject the offer. I wanted him to have the opportunity to talk to Margaret. That discussion did not change Ray's mind. However, I wanted to ensure that the family had what I believed to be an important discussion.
32. Ray, Bob, and I discussed out trial strategy from the moment I was retained to represent him. It is not unusual to plead multiple defenses on an omnibus order. In fact, in Pierce County it is very common to endorse many different

defenses at omnibus in order to preserve them all. As for defenses asserted at trial, I discussed the issues with Ray prior to trials and especially prior to the third trial, where we were shifting defense. I explained to him the dangers of doing this. He understood this perfectly and believed that it was in his best interest to do this. In fact, he insisted on his right to assert self-defense. He was well aware of the risk involved and wanted to take it. Obviously as his attorney I make strategic and tactical decisions. However Ray was a very active and intelligent client who had been through multiple trials on this case. He wanted to assert self defense at the third trial. He knew the potential risks. He addressed the change of defense very well on his cross-examination and, frankly, it was a non-issue in closing argument at trial. The prosecutor barely mentioned it. From the presentation of the issue and argument regarding at trial, I am confident in saying that this was a non-issue at trial. I fully understand that it was a good intellectual issue on appeal; however, as trial counsel, I can say that it was not a significant factual issue. This is not to say we did not treat it very seriously and work to minimize the shift. But the prosecutor did not develop the subject in testimony and their closing arguments on it did not emphasize it in any way.

33. Throughout my representation of him, Mr. Garland was pleased with my work. I think at the conclusion of what was then the third murder trial, albeit the first one to go all the way to verdict, he simply needed a fresh attorney. After working intensely with one investigator and one attorney for several years, Ray wanted a fresh perspective on the case. That was not a bad idea. I

had worked very hard for him and had always enjoyed a solid relationship with him. We were able to talk things out and had never an any unresolved matters between us.

34. On the other hand, Margaret, who naturally wanted the best for her son, continually wanted more to be done, kept pressing us to do things that we did not believe were tactically or strategically necessary. Had they been, I would have applied for *Punsalan* funds to cover those costs. I was not required to do so.

35. It was an honor and a privilege to represent Ray Garland. I did my best for him. Again, Ray, Bob, and I worked diligently on the case. We completely and thoroughly discussed the witnesses, the defense, trial strategy and the effects any shifts in strategy might have in the case. Ray concurred in every decision that was made in the case and in fact insisted that he be allowed to assert self-defense at the third trial. He went into that trial with his eyes wide open as to the potential liability of changing the defense in the manner that we did. Again, while I know it was and apparently is an issue on appeal, it was not an issue at trial.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNED at Tacoma, Washington this 3<sup>rd</sup> day of February, 2015.

  
\_\_\_\_\_  
BARBARA COREY

# APPENDIX A

## Barbara

**From:** Stephen Penner [spenner@co.pierce.wa.us]  
**Sent:** Tuesday, November 03, 2009 2:18 PM  
**To:** 'Barbara Corey'  
**Cc:** Maureen Goodman  
**Subject:** RE: Garland - Proposal for Settlement

Okay. Are we still on for this Friday at 1 30 to do (1) closing on count IV, and (2) scheduling on the dismissal motion?

**From:** Barbara Corey [mailto:bcorey9@net-venture.com]  
**Sent:** Tuesday, November 03, 2009 2:12 PM  
**To:** Stephen Penner  
**Cc:** Maureen Goodman  
**Subject:** RE: Garland - Proposal for Settlement

My client's mother is in Scotland until November 14<sup>th</sup>. We cannot do anything until she returns.

Barbara Corey  
Attorney at Law. PLLC  
901 South "I" Street, #201  
Tacoma, WA 98405  
253.779.0844  
253.272.9220(fax)

**From:** Stephen Penner [mailto:spenner@co.pierce.wa.us]  
**Sent:** Tuesday, November 03, 2009 2:09 PM  
**To:** 'Barbara Corey'  
**Cc:** Maureen Goodman  
**Subject:** Garland - Proposal for Settlement

Barbara,

Now that the dust has settled a bit, we've had a chance to look at the other case and the standard ranges on both cases. We'd like to make the following package offer to settle both cases (the numbers assume a conviction on the still pending UPOF 1 count on the murder case):

On 04-1-05310-4:

We would amend charges to Assault 3 & UPOF 1. Drop the firearm enhancement.

He resultant range would be 36-48 months.

The consideration for the reduction is:

No appeals, collateral attacks, PRPs or other post-conviction relief on either case

No motions for new trial on 04-1-05384-8

Withdraw the motion to dismiss on 04-1-05384-8

Agree to a midpoint sentence of 362 months (incl FASEs) on 04-1-05384-8

We would do the amendment and guilty plea before the sentencing on 04-1-05384-8.

We would then set over sentencing until after the appeal time limit has run on 04-1-05384-8.

Then on this case we do an agreed recommendation of 36 months, concurrent with 04-1-05384-8.

On 04-1-05384-8:

Currently, his range is 271-371 (that includes the 96 months of firearm enhancements). His new range (with 2 new points from 04-1-05310-4) would be 312-412 (again including the 96 months of firearm enhancements).

The parties agree to a midpoint sentence of 362 months (256 + 96).

And we put on the record our agreement under 04-1-05310-4, including the fact tha allowing the appeal time limit to lapse is intentional and part of the bargain.

If your client appeals or in any other way attacks the convictions or sentences on either case, then we move to vacate plea on 04-1-05310-4 and proceed on the original charges of Assault 1 with a firearm enhancement and UPOF 1.

Please discuss the offer with your client and his family and let us know. It's worth noting that the agreed total 362 month sentence is within your client's standard range anyway just on 04-1-05384-8. Thanks.

Stephen M. Penner  
Maureen Goodman  
Pierce County Prosecutor's Office

\_\_\_\_\_ Information from ESET Smart Security, version of virus signature database 4570  
(20091103) \_\_\_\_\_

The message was checked by ESET Smart Security.

<http://www.eset.com>

\_\_\_\_\_ Information from ESET Smart Security, version of virus signature database 4570  
(20091103) \_\_\_\_\_

The message was checked by ESET Smart Security.

<http://www.eset.com>

**Barbara**

**From:** Stephen Penner [spenner@co.pierce.wa.us]  
**Sent:** Tuesday, November 10, 2009 2:07 PM  
**To:** 'Barbara Corey'  
**Subject:** FW: Garland Dates

Are you in the office this week?

-S

**From:** Stephen Penner  
**Sent:** Monday, November 09, 2009 9:07 AM  
**To:** 'Barbara Corey'  
**Cc:** Maureen Goodman  
**Subject:** Garland Dates

Oh well, we tried. Maybe a different approach...

As far as the argument on count IV goes, how about Friday 11/20 at 1:30? That's after Ms. Cook returns. We could also use that date as a sort of "status conference" on the motion to dismiss. The judge could rule on your motion to reconsider whether to have a testimonial hearing and whether an out-of-county judge should be brought in. Once those are settled we will know how to proceed on the actual motion. I was thinking we could plan to set the actual motion to start Monday 12/7. That would give us the week to do it, and it might be enough time between 11/20 and 12/7 to get an out-of-county judge, if necessary.

If those dates work for you, I will contact Geri to see if they work for the judge. If so, maybe we can do a scheduling order off the record?

Stephen M. Penner  
Pierce County Prosecutor's Office  
tel (253) 798-7314  
fax (253) 798-6636  
spenner@co.pierce.wa.us

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(20091110) \_\_\_\_\_

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**Barbara**

**From:** Stephen Penner [spenner@co.pierce.wa.us]  
**Sent:** Monday, November 16, 2009 10:46 AM  
**To:** 'Barbara Corey'; Kristine Maine; Geri Markham  
**Cc:** Michelle Evans; Maureen Goodman; 'Kim Redford'  
**Subject:** RE: Garland - Scheduling

Barbara,

I agree he didn't address how you would be compensated, but he made it clear that you would remain on the case through the conclusion of the trial, regardless of compensation. The trial hasn't concluded yet; we need to complete argument on count IV. Your post trial motions are a separate issue. There's no reason to put off closing argument.

-Steve

**From:** Barbara Corey [mailto:bcorey9@net-venture.com]  
**Sent:** Monday, November 16, 2009 10:37 AM  
**To:** Stephen Penner; Kristine Maine; Geri Markham  
**Cc:** Michelle Evans; Maureen Goodman; 'Kim Redford'  
**Subject:** RE: Garland - Scheduling  
**Importance:** High

I do not believe that Judge Felnagle has addressed whether or not I will be compensated. I recall that he said that he would appoint me as DAC if the \$\$ was not there. I disagree with Mr. Penner's recollection of the conversation. I am asking for compensation. I do not want Mr. Garland to have to forfeit his meritorious post trial motions, including the dismissal motion, but I need to be compensated for my work.

Thanks, BC

Barbara Corey  
 Attorney at Law, PLLC  
 901 South "I" Street, #201  
 Tacoma, WA 98405  
 253.779.0844  
 253.272.9220(fax)

**From:** Stephen Penner [mailto:spenner@co.pierce.wa.us]  
**Sent:** Monday, November 16, 2009 8:59 AM  
**To:** 'Barbara Corey'; Kristine Maine; Geri Markham  
**Cc:** Michelle Evans; Maureen Goodman; 'Kim Redford'  
**Subject:** RE: Garland - Scheduling

As far the closing argument goes, Judge Felnagle has already addressed Ms. Corey's status as Mr. Garland's attorney for this trial, regardless of payment issues. We need to finish count IV. If Ms. Corey elects not to pursue her elective motions, so be it, but the trial portion needs to be concluded.

Geri, please ask the judge to schedule closing argument on count IV.

**From:** Barbara Corey [mailto:bcorey9@net-venture.com]  
**Sent:** Friday, November 13, 2009 4:35 PM

1/10/2001

**Barbara**

**From:** Stephen Penner [spenner@co.pierce.wa.us]  
**Sent:** Friday, December 11, 2009 10:28 AM  
**To:** Geri Markham; 'Barbara Corey'  
**Cc:** Maureen Goodman  
**Subject:** Garland Motions This Afternoon

Geri,

As I understand it, we are scheduled to address the following motions this afternoon:

- (1) Defendant's motion to dismiss, and specifically:
  - (a) State's motion to deny the motion to dismiss based on pleadings and the record at trial
  - (b) Defendant's motion to reconsider earlier ruling of no testimony at hearing on motion to dismiss
  - (c) Defendant's motion for out-of-county judge to hear motion to dismiss;
- (2) Defendant's motion for new trial;
- (3) Reschedule the sentencing from 12/11 to new date; and
- (4) Reschedule trial on other case (04-1-05310-4, Assault 1+) to a new date.

I know we have limited time, so to expedite things, please let the judge know that the State suggests we begin with (1)(a) the State's motion to deny the defendant's motion to dismiss based on the pleadings and the record at trial. If that is granted, there will be no need to address (1)(b) or (1)(c).

I will have scheduling orders ready for the dates we set. See you at 1:30.

**Stephen M. Penner**  
**Pierce County Prosecutor's Office**  
930 Tacoma Ave S, Rm 946  
Tacoma, WA 98402  
tel (253) 798-7311  
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spenner@co.pierce.wa.us

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**PIERCE COUNTY PROSECUTOR**

**February 10, 2015 - 2:51 PM**

**Transmittal Letter**

Document Uploaded: 7-prp2-451654-Response.pdf

Case Name: IN RE THE PRP OF: RAYMOND GARLAND

Court of Appeals Case Number: 45165-4

**Is this a Personal Restraint Petition?**  Yes  No

**The document being Filed is:**

Designation of Clerk's Papers  Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion:

Answer/Reply to Motion:

Brief:

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes:

Hearing Date(s):

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other:

**Comments:**

SUPPLEMENTAL RESPONSE TO PRP

Sender Name: Heather M Johnson - Email: [hjohns2@co.pierce.wa.us](mailto:hjohns2@co.pierce.wa.us)

A copy of this document has been emailed to the following addresses:

[backlundmistry@gmail.com](mailto:backlundmistry@gmail.com)